
 <p style="text-align: center;">STATE OF NEW YORK DEPARTMENT OF CORRECTIONAL SERVICES</p> <p style="text-align: center;">DIRECTIVE</p>	TITLE		NO. 0401
	<p style="text-align: center;">Release of Information to the News Media</p>		DATE 6/16/2008
SUPERSEDES DIR# 0401 Dtd. 10/01/02	DISTRIBUTION A B	PAGES PAGE 1 OF 7	DATE LAST REVISED 12/16/2008
REFERENCES (Include but are not limited to)	APPROVING AUTHORITY 		

I. BACKGROUND. This Directive sets forth the Department's policies on media access to information, facilities, employees and inmates. It attempts to balance the media's right to access information in the public's name with laws safeguarding the personal privacy rights of staff and inmates. It also seeks to weigh the media's right to know what is occurring within correctional facilities against the Department's responsibility to maintain safety and security for staff, inmates and the communities surrounding facilities.

The United States Supreme Court has repeatedly held that there is no media right of access to correctional facilities around the nation (*Pell v. Procunier*, 417 US 817 [1974]), in part because of states' legitimate need to maintain safety and security. In addition, state Correction Law §146 does not include the media among those with a right of access to correctional facilities.

The general public's access to information and correctional facilities is more specifically described in Civil Rights Law 50-a, 7 NYCRR Part 51 and Directives #2009, "Maintaining Logs-Dissemination of Criminal History," #2010, "Departmental Records," #2012, "Release of Employee Personnel and Payroll Information," and #2013, "Employee Personal Identifying Information."

II. POLICY.

A. General. The Department is committed to meeting its responsibilities to uphold the Freedom of Information Law (Public Officers Law §87), the Personal Privacy Protection Law (Public Officers Law §95), the Civil Rights Law, NYCRR Title 7 and all other applicable statutes regarding the disclosure of information.

B. Information Releases.

1. All facility press releases and statements/letters prepared for public dissemination shall be reviewed and approved in advance of release by the Department's Public Information Office (PIO). The sole exception is facility release of information on escapees in accordance with the facility's Ready Emergency Data book.
2. Facility staff and volunteers shall not represent themselves as official agency spokespeople unless authorized to do so by the PIO.
3. Central Office employees shall receive approval from the PIO, through their respective Deputy or Associate Commissioner or Assistant Commissioner, before responding as agency spokespeople to any inquiries from the media.

C. Interviews.

1. It is the policy of New York State to make its inmates and programs generally accessible to the media to the extent deemed appropriate.
2. It is the responsibility of superintendents/designees to accompany media while inside of correctional facilities. No other staff shall be interviewed by the media unless approved in advance by the PIO.
3. Media will be escorted from any Department location if at any time media willfully violate the rules contained herein or any facility rule or direction from the superintendent/designee, or if any incident arises that in the judgment of the PIO requires the removal of the media.

III. INFORMATION SOURCES.

- A. Record's Access Officer. Information releasable to the media under the Freedom of Information Law (FOIL) will be provided upon written request to the:

Records Access Officer
 Department of Correctional Services
 The Harriman State Office Campus
 1220 Washington Avenue
 Albany, NY 12226-2050

- B. Public Information Office (PIO).

1. Information releasable to the media may be requested of the Public Information Office (PIO) by

Telephone - (518) 457-8182
 Facsimile - (518) 457-7070
 E-mail - lmfoggia@docs.state.ny.us
 Mail - Public Information Office
 Department of Correctional Services
 The Harriman State Office Campus
 1220 Washington Avenue
 Albany, NY 12226-2050

The PIO may require written FOIL requests from media seeking multiple documents, compilations of data and employee personnel data, among other documents.

2. Media requests for overall or facility-specific information may be directed either to the PIO or to the superintendent/designee of the appropriate facility. Responses shall be formulated collaboratively by the PIO and superintendent/designee. The PIO will determine the release of information (by whom, what and in what form).
3. In the event of a facility unusual incident, all media inquiries shall be directed to the PIO which shall decide the best manner of response to media inquiries.

The PIO shall ensure that the media are provided with scheduled, periodic updates on such incidents.

Should any type of facility incident occur that requires the rescheduling of correctional facility access, the PIO or superintendent shall so advise the media with as much advance knowledge as possible. The canceled media event shall be rescheduled following resolution of the incident, if practicable.

- C. D.O.C.S. Website. The Department's website, www.docs.state.ny.us, provides press releases and general information. Its "Inmate Lookup" section provides access to most of the inmate information listed in V-A, below.

IV. RELEASE OF EMPLOYEE DATA.

- A. Releasable Information. In accordance with Civil Rights Law 50-a, the Personal Privacy Protection Law and Directive #2012, the PIO will release the following information about employees:

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|--|------------------------|
| ▪ full name, | ▪ salary information, |
| ▪ earliest date of service, | ▪ current shift, |
| ▪ current and previous assigned correctional facilities, | ▪ work assignment, and |
| ▪ current and past titles, | ▪ duty status. |

- B. Employees under Discipline. The existence and content of a Notice of Discipline (NOD) served upon an employee shall not be routinely disclosed by the PIO because NODs are non-final actions. NODs may be released and discussed in response to a media request if the subject of a notice has become the subject of a media story and if disclosure is not prohibited by law.

The PIO may make available upon request from the media any arbitrator's decisions rendered in response to Notices of Discipline, as final decisions are available under FOIL unless disclosure is prohibited by another statute.

V. RELEASE OF INMATE DATA.

- A. Releasable Information. Except as limited or prohibited by section B, below, the following information may be made available on any inmate:
- commitment or legally-changed name,
 - Department Identification Number,
 - date of birth,
 - birthplace,
 - sex,
 - city and county of commitment,
 - city of previous residence,
 - physical description,
 - race/ethnicity,
 - crime(s) and sentence(s) of commitment,
 - release eligibility dates,
 - previous incarceration history,
 - owning facility,
 - transfer history (except transfers to OMH custody and transfers for holding pending civil confinement determination,)
 - disciplinary history,
 - general state of health, subject to Health Insurance and Accountability Act (HIPAA) rules,
 - work assignments, and
 - departmental actions regarding confinement and release.

Most of the above listed information is available to the media under the "Inmate Lookup" section on the Department's website, www.docs.state.ny.us.

- B. Exceptions.
1. Criminal Procedure Law §720.35 prohibits disclosure of all official records and papers on inmates committed as youthful offenders.
 2. Criminal Procedure Law §160.50 requires the sealing of records pertaining to any reversed conviction.
- C. Inmate Death. The Department will not confirm the death of an inmate in its custody before notification of next of kin. Those seeking the cause of an inmate death shall contact the office of the coroner/medical examiner of the county in which the death occurred. County Law §671 and §674 require inquiries into inmate deaths and autopsies to determine cause of death. County Law §677 leaves it to coroners and medical examiners to determine if results will be released and to whom.
- D. Other Information. Any other inmate information shall be released at the Commissioner's discretion, giving due consideration to applicable federal and state statutes.

VI. MEDIA INTERVIEWS.

A media interview is defined as a meeting between an eligible inmate under the conditions cited below with either (1) a credentialed, full-time representative of a bona fide media organization or (2) journalists who are not employees of any media outlet but have written documentation of a bona fide media's interest in the subject for which the non-employee is seeking interview access or can provide media credentials or previous documented work.

- A. Approval. Media interviews and access to correctional facilities shall be approved and arranged by the PIO in accordance with applicable sections of Correction Law §146 and 7 NYCRR Part 51, "Public

Contacts of Institutions and Employees." Media are not required to advise the PIO of the subject of an interview.

B. Inmate Eligibility.

1. Inmates who are in general confinement status may, at the discretion of the Commissioner, receive face-to-face interviews.
2. Inmates who are in administrative segregation status may, at the discretion of the Commissioner, substitute one media interview for their one non-legal visit per week.
3. Inmates in pre-hearing confinement status or serving a disciplinary confinement sanction, which includes Special Housing Units and Keeplock, will not be approved for media interviews.

C. Arranging an Inmate Interview.

1. It is the media's responsibility to mail a letter to the inmate:
 - a. asking if the inmate agrees to be interviewed;
 - b. advising the inmate to obtain from staff, fill out and sign a copy of the inmate media consent form attached to this Directive;
 - c. advising the inmate to file the form with the superintendent; and
 - d. advising the inmate to inform the reporter of his/her interest in writing or via a collect telephone call when steps a-c are completed.
2. It is the media's obligation to maintain contact with the inmate to ensure the steps above are completed. Staff should not ask inmates if they have consented to an interview or if they have or will sign a consent form unless directed to do so by the PIO or superintendent/designee.
3. Upon the media's knowledge of the inmate's interest, the media will then send the PIO a letter requesting an inmate interview and listing potential dates for the interview, the desired time and length of the interview, equipment which the media desires to bring in, the need for photographs and/or generic film or video footage of the facility and the number of media to attend and their roles. The PIO will review the request with the superintendent and the Commissioner where necessary, and advise the media as to what portions of its request can be reasonably accommodated.
4. After the steps above have been completed by the inmate and the media, the PIO will authorize the superintendent to schedule the interview with the conditions set under the paragraph below. Interviews will be scheduled on state business days granting the media access no earlier than 8 a.m. with departure scheduled for no later than 4 p.m., unless the media can justify the need for an exemption to the satisfaction of the PIO.

D. Interview Rules.

1. No third parties shall be present for an inmate interview with the media except under extraordinary circumstances as approved by the Commissioner, whose decision is final.
2. Media may visit inmates in accordance with Directive #4403, "Inmate Visitor Program." However, media visiting under that Directive are subject to all of its rules and procedures, including those barring cameras and tape recorders while limiting the use of paper and specifically limiting writing implements to "flex-pens" issued by the visiting room officer and returned to the visiting room officer at the conclusion of the visit.
3. Inmates are allowed to include reporters among their allotted numbers under the call-home program which allows inmates to make collect calls during certain hours of the day.
4. Interviews are limited to one media outlet at a time. Multiple media requests will be scheduled individually in time frames established jointly by the superintendent/designee and PIO.
5. Interviews for live broadcast are prohibited. If an interview is broadcast live, the inmate may be denied future interviews and the medium may be denied future access to prisons.

6. Interviews may be denied if the mandates of this Directive are not followed or if the inmate or media attempt to circumvent this Directive.
7. Any attempt by the media to alter the agreed-upon conditions for an interview after arriving at the facility may be grounds to deny or immediately terminate the interview.
8. In order to minimize facility disruption, access for a single story will be limited to a maximum of two visits unless the media, in advance of the first visit, establishes to the Commissioner's satisfaction a legitimate need for more access.
9. Inmates may not request or receive compensation or remuneration in any form for themselves or others for their participation in a media interview.
10. An inmate who has been interviewed by representatives of the news media shall not be subjected to Departmental discipline or any other adverse action for participation in the interview, or views expressed therein.

E. Conduct of the interview.

1. The interview will take place in an area designated by the superintendent or superintendent's designee and approved by the PIO. The interviewing and photographing of the inmate will occur only in this designated area unless other arrangements have been previously approved by the Superintendent and PIO.
2. No other facility access will be granted to the media during an inmate interview visit unless previously approved by the PIO.
3. All interviews between representatives of the news media and inmates shall be supervised by way of direct observation by an assigned security employee. Such observation does not mean monitoring or listening to the interview in a manner that could reasonably be interpreted as having a chilling effect. Such observation is to occur in a manner that minimizes interference with the interview but maintains appropriate security observance. Departmental staff shall not photograph, audio or videotape media interviews.
4. Inmates may only bring to the interview that property which is allowed during a legal visit, unless an exception is pre-approved by the superintendent/designee and PIO.

VII. IMAGES AND "TOOLS OF THE TRADE".

- A. Equipment. Reasonable limits will be placed on the amount of "tools of the trade" media may bring in to make still and video pictures and audiotape during any program story or inmate interview. Picture and sound equipment may not be used during access to and egress from an interview site. Media shall not be permitted to video while walking through a facility, but can, with the approval of the superintendent/designee, stop to take specific pictures. Notebooks and writing implements are allowed. Under no circumstances will a representative of the media be allowed to bring a cellphone, laptop or similar equipment into a facility. At no time will media allow inmates access to any of their equipment. Tools of the trade are subject to search.

B. Photographs.

1. For any photograph or video in which inmates are identifiable, whether as part of a crowd, a program in operation, or in any other setting, consent forms signed by the inmate(s) are required.
2. No pictures may be made by the media of individual youthful offenders unless they specifically consent.
3. Photographs taken while physically standing on any Department property require the prior permission of the PIO. Violators risk the confiscation of their exposed film or deletion of the images in question from their digital camera(s).
4. The Department has no authority over the making of pictures or sound recordings of its property when the media is physically standing off Departmental property.

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- C. Aircraft. Anyone desiring to do an aircraft fly-over of a facility is advised to obtain permission in advance from the PIO. Fly overs are regulated by the Federal Aviation Administration. Additionally, the Department is obligated to respond to any potential security breach, which includes the close proximity of any aircraft whose identity and/or intentions are not known.

VIII. OTHER FACILITY ACCESS.

- A. Media access may be requested to observe particular programs or locations. A decision on whether to approve access and/or the making of still or video photos and audiotape will be made by the PIO in consultation with the superintendent/designee.
- B. Certain areas of the correctional facility will not be accessed during a visit either for security reasons or for the privacy of inmates. They include but are not limited to disciplinary housing areas, arsenals, perimeter security systems, medical and mental health units, protective custody units plus any other areas deemed of a sensitive security nature by the superintendent and PIO.
- C. Interviews of attendees during program observance will be at the discretion of the PIO and the superintendent/designee.
- D. Access by student researchers, including those in journalism or media programs, is governed by Directive #0403, "Research Studies and Surveys."
- E. The roles of the media and those of facility volunteers (Directive #4750, "Volunteer Services Program") are separate and distinct, as is their ability to access various parts of facilities. Therefore, no media will be allowed to serve as volunteers unless approved by the PIO. No volunteer shall take the information learned as a volunteer and share that with the media for story purposes unless previously approved by the PIO.

Inmate Media Consent Form

NEW YORK STATE DEPARTMENT OF CORRECTIONAL SERVICES
MEDIA INTERVIEW CONSENT FORM

To: Superintendent

I, _____, (_____) hereby grant
(inmate print own full name) (DIN number)

permission to the New York State Department of Correctional Services and to

_____ of _____.
(Reporter's name) (Media outlet)

_____ *(Address)* _____ *(Phone number)*

to make use of my name, comments, still or video pictures for any legitimate purposes including publication by the media.

I am choosing to participate in this interview of my own free will.

I understand I am subject to discipline, under Inmate Rule 103.20 if I seek or receive reward, gain or remuneration, for myself or others, for my participation herein.

Inmate
Signature _____ Date _____

Witness
Signature _____ Date _____

Witness
Title _____

Note: Inmates who are a party to any pending or anticipated legal proceeding are advised to discuss with their attorney their intention to participate in an inmate interview. Attorney permission is not required for inmates to participate in an interview, nor will an attorney's opposition bar a willing inmate from participating in an interview.

cc: Guidance
Public Information Office